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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,060	01/22/2002	Andres Vega-Garcia	418268899US	3880
45979	7590	03/22/2006	EXAMINER	
PERKINS COIE LLP/MSFT P. O. BOX 1247 SEATTLE, WA 98111-1247			SHAND, ROBERTA A	
			ART UNIT	PAPER NUMBER
			2616	
DATE MAILED: 03/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,060

Applicant(s)

VEGA-GARCIA ET AL.

Examiner

Roberta A. Shand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12, 17, 18, 21, 31 and 35 is/are rejected.
- 7) ☒ Claim(s) 7, 13-16, 19, 20, 22-30, 32-34, 36 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, 8 and 31-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Gross (U.S. 2002/0176367 A1).

3. Regarding claims 1 and 31, Gross teaches a method for optimizing real time communication between one or more remote devices on a network (fig. 1), comprising: receiving one or more meaningful control packets from at least one remote device to maintain quality of service (fig. 4); receiving one or more dummy control packets (test packets) from at least one remote device the dummy control packet (test packet) and the meaningful control packet having the same protocol (IP); and approximating the bandwidth available on the network based on the difference in arrival times between at least one of the meaningful control packet and at least one of the dummy packets (page 5, paragraph 39).

4. Regarding claim 2, Gross teaches (page 5, paragraph 39) reporting the approximated bandwidth to the remote devices.

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5. Regarding claims 3 and 5, Gross teaches (page 2, paragraph 23) recording the arrival time specified in the data field of the packet.
6. Regarding claims 4 and 6, Gross teaches (page 2, paragraph 23) recording the packet size.
7. Regarding claim 8, Gross teaches (page 1, paragraph 6) a computer readable medium having computer executable instructions.
8. Regarding claim 32, Gross teaches (fig. 4) a network application residing on at least one device.
9. Regarding claim 33, Gross teaches (page 7, paragraphs 55-56) the dummy control packet (test packet) and the meaningful control packet having the same protocol (IP)
10. Regarding claim 34, Gross teaches computing difference in arrival times between at least one of the meaningful control packet and at least one of the dummy packets (page 5, paragraph 39).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 9-12 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross in view of Yip (U.S. 6891798).

13. Regarding claim 9, Gross teaches a method for optimizing real time communication between one or more remote devices on a network (fig. 1), comprising: approximating the bandwidth available on the network based on the difference in arrival times between at least one of the meaningful control packet and at least one of the dummy packets (page 5, paragraph 39).

14. Gross does not teach adjusting data transmission settings of the device based on the bandwidth available on the network.

15. Yip teaches (fig. 4) adjusting data transmission settings of the device based on the bandwidth available on the network. It would have been obvious to one of ordinary skill in the art to adapt this to Gross' system to avoid congestion within the system, and avoid data loss.

16. Regarding claim 10, Gross teaches (page 5, paragraph 39) reporting the approximated bandwidth to the remote devices.

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17. Regarding claim 11, Yip teaches a (col. 5, lines 21-30) computing a bandwidth limit as a minimal of local bandwidth.

18. Regarding claim 12, Yip teaches a (col. 4, line 52 - col. 5, line 30) selecting the bandwidth limit as bandwidth available on the network when no data is reported lost (fig. 3).

19. Regarding claim 35, Gross teaches a system for optimizing media sessions between one or more remote devices on a network (fig. 1), comprising: means for receiving one or more meaningful control packets from at least one remote device to maintain quality of service (fig. 4); means for receiving one or more dummy control packets (test packets) from at least one remote device the dummy control packet (test packet) and the meaningful control packet having the same protocol (IP); and means for approximating the bandwidth available on the network based on the difference in arrival times between at least one of the meaningful control packet and at least one of the dummy packets (page 5, paragraph 39).

20. Gross does not teach means for adjusting data transmission settings of the device based on the bandwidth available on the network.

21. Yip teaches (fig. 4) means for adjusting data transmission settings of the device based on the bandwidth available on the network. It would have been obvious to one of ordinary skill in the art to adapt this to Gross' system to avoid congestion within the system, and avoid data loss.

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22. Claims 17, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross in view of Yip and further in view of Surazski (U.S. 6657983 B1).

23. Regarding claim 17, Gross nor Yip teach increasing the bandwidth available on the network when the bandwidth limit is greater than the bandwidth available.

24. Surazski teaches a (col. 15, line 41 - 52) increasing the bandwidth available on the network when the bandwidth limit is greater than the bandwidth available. It would have been obvious to one of ordinary skill in the art to adapt this to Gross and Yip's system to prevent data loss.

25. Regarding claim 18, as for a base bandwidth when adjusting, it is inherent in Surazski's system that when estimating the bandwidth certain thresholds are set (fig. 3).

26. Regarding claim 21, Surazski teaches a (fig. 1) enabling a QoS mechanism on the device.

Allowable Subject Matter

27. Claims 7, 13-16, 19-20, 22-30, 36 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

28. Applicant's arguments filed December 22, 2005 have been fully considered but they are not persuasive. Applicant argues that Gross only describes that the bandwidth is determined from the test packet and neither teaches nor suggests that the bandwidth can be determined from a combination of test packets and normal packets. Applicant's claim does not recite normal packet and test packet, therefore Gross' first packet reads on applicant's meaningful packet and Gross' second packet reads on Applicant's dummy packet

Conclusion

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

30. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberta A Shand whose telephone number is 571-272-3161. The examiner can normally be reached on M-F 9:00am-5:30pm.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

33. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Roberta A Shand
Examiner
Art Unit 2665



STEVEN NGUYEN
PRIMARY EXAMINER